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MOHD NAWI YA'AKUB

v.

P/ACP W RAMASAMY, KETUA CAWANGAN KHAS IPK KELANTAN & ANOR

B

COURT OF APPEAL, PUTRAJAYA
MOHD GHAZALI YUSOFF JCA
KN SEGARA JCA
SULAIMAN DAUD JCA
C [CIVIL APPEAL NO: W-01-21-2005]
18 SEPTEMBER 2008

POLICE: *Disciplinary proceedings - Dismissal - Breach of natural justice - Duty of adjudicating authority - Procedural non-compliance - Framing of charges - Whether serious miscarriage of justice occasioned - Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970, r. 6(2)(a), (c)*

D

PUBLIC SERVANTS: *Dismissal - Dismissal from Police Force - Disciplinary proceedings - Breach of natural justice - Duty of adjudicating authority - Procedural non-compliance - Framing of charges - Whether serious miscarriage of justice occasioned - Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970, r. 6(2)(a), (c)*

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The plaintiff, a Lance Corporal with the Royal Malaysian Police Force, was dismissed from service after a disciplinary proceeding presided over by the 1st defendant ('adjudicating authority'), a servant and/or agent of the 2nd defendant. The plaintiff filed a writ of summons in the High Court, and averred that he had, on 19 March 1997, appeared in an orderly room proceeding faced with five charges under the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970 ('Regulations'). The plaintiff alleged that he was not informed in writing he might be dismissed, that he was not represented in the orderly room proceeding and that the sentence of dismissal on the 5th charge was null and void. The trial judge dismissed the plaintiff's claim, resulting in the present appeal by the plaintiff. In this appeal, it was necessary to determine whether there had been any breach of natural justice, procedural impropriety or unreasonableness in the dismissal of the plaintiff. With regard to the five charges, the plaintiff was charged with five disciplinary

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offences committed on different dates but was subjected to an inquiry for all the offences in the same orderly room proceeding. Further, the 1st to 4th charges were not framed and numbered sequentially in the order of the respective dates the offences were committed, and the date of the offence was not disclosed in the 5th charge.

Held (allowing the appeal, and declaring that the appellant's dismissal was null and void)
Per KN Segara JCA delivering the judgment of the court:

(1) When the adjudicating authority was dealing with the 5th charge immediately after the 4th charge, it would appear that he had the severest punishment of "dismissal" as the only option open to him by way of punishment for the 5th charge. In the circumstances, the adjudicating authority owed a duty (consonant with procedural fairness) to inform the plaintiff of the punishment of "dismissal" for the 5th charge so that the plaintiff could consider his plea carefully, in the light of the severe consequences that would follow for this 5th charge, in sharp contrast to the punishment already awarded for a similar offence (*vide* 3rd and 4th charges) to which he had pleaded guilty earlier in the proceeding. (para 18)

(2) There had also been a serious breach of procedural fairness in framing the five charges in total disregard of the date of the commission of the disciplinary offences, bearing in mind the offences were committed over a span of almost three years and the plaintiff subjected to only one orderly room proceeding for all the five charges before the same adjudicating officer. Procedural fairness had been seriously compromised and the plaintiff deprived of a fair and unprejudiced hearing, particularly with regard to the appropriate punishment for the respective offences in their sequential order of commission. In imposing the severe punishment of dismissal for the 5th charge, the adjudicating officer had completely given no consideration as to whether the plaintiff could have committed the offence in the 5th charge earlier in time than any of the four charges, for which he had not imposed the punishment as severe as that for the 5th charge. (para 19)

(3) There had been serious procedural non-compliance (express and implied in the Regulations) by the adjudicating authority in the orderly room proceeding in: (i) not recording briefly the facts in support of the respective charges; (ii) not ascertaining whether the facts supported the offence committed; (iii) not making a finding as to whether the respective offence had been proved; and (iv) not recording a finding of guilt before awarding punishment in respect of the offence. There could be no doubt that procedural fairness had been compromised by the adjudicating authority in not complying with r. 6(2)(a) and (c) of the Regulations. This had occasioned a serious miscarriage of justice and adversely prejudiced the plaintiff as clearly reflected in the award of the punishment of "dismissal" when no facts had been recorded to support the alleged offences and no finding of guilt recorded for the respective charges. (paras 20 & 21)

(4) Furthermore, on the facts, a patent error in the framing of the alleged offences in the 3rd, 4th and 5th charges had rendered them bad in law and, consequently, the decision of the adjudicating authority absurd and perverse. (paras 22, 23, 24 & 25)

(5) In the above circumstances, the decision of the adjudicating authority, in the orderly room proceeding held on 19 March 1997, must be struck down on grounds of procedural unfairness or *Wednesbury* unreasonableness. (para 26)

Bahasa Malaysia *Translation Of Headnotes*

Plaintif, seorang lans koperal dengan Polis Diraja Malaysia, telah dibuang kerja selepas suatu prosiding tatatertib yang diketuai oleh defendan pertama ('pihak berkuasa pengadilan'), seorang pekerja dan/atau agen defendan kedua. Plaintiff memfail satu writ saman dalam Mahkamah Tinggi, dan menyatakan bahawa beliau telah, pada 19 Mac 1997, muncul dalam suatu proceeding bilik perbicaraan dan berdepan dengan lima tuduhan di bawah Peraturan-peraturan Polis (Kelakuan dan Tatatertib) (Pegawai Polis Rendah dan Konstabel) 1970 ('Peraturan'). Plaintif menghujah bahawa beliau tidak diberitahu secara tulis beliau mungkin dibuang kerja, bahawa beliau tidak diwakili dalam prosiding bilik perbicaraan dan bahawa hukuman pembuangan kerja atas tuduhan kelima adalah batal dan tak sah. Hakim perbicaraan menolak tuntutan plaintif, mengakibatkan rayuan ini dibuat oleh plaintif. Dalam

rayuan ini, ia perlu dibicara sama ada terdapat apa-apa pelanggaran keadilan asasi, ketidaksopanan prosedur atau ketidakmunasabahan berhubungan dengan pembuangan kerja plaintif. Berkaitan dengan lima tuduhan tersebut, plaintif telah dituduh dengan lima kesalahan tatatertib yang dilakukan pada tarikh-tarikh berbeza tetapi terpaksa menghadap sesuatu siasatan untuk semua kesalahan di prosiding bilik perbicaraan yang sama. Tambahan lagi, tuduhan pertama hingga keempat tidak ditulis dan dinombor secara berurutan mengikut tarikh kesalahan dilakukan masing-masing, dan tarikh kesalahan tidak dinyatakan dalam tuduhan kelima.

Diputuskan (membenarkan rayuan, dan membuat deklarasi bahawa pembuangan kerja perayu batal dan tak sah)
Oleh KN Segara HMR menyampaikan penghakiman mahkamah:

(1) Apabila pihak berkuasa pengadilan membicara tuduhan kelima sejurus selepas tuduhan keempat, ia nampak macam beliau mempunyai hukuman paling keras iaitu "pembuangan kerja" sebagai opsyen tunggal yang boleh gunakan olehnya bagi penghukuman untuk tuduhan kelima. Dalam keadaan sebegitu, pihak berkuasa pengadilan mempunyai kewajipan (selaras dengan keadilan prosedur) untuk memberitahu plaintif tentang hukuman "pembuangan kerja" untuk tuduhan kelima supaya plaintif boleh timbangkan akuannya dengan teliti, memandangkan akibat keras yang berturut bagi tuduhan kelima, berbeza dengan hukuman yang telah dikenakan untuk kesalahan yang serupa (lihat tuduhan-tuduhan ketiga dan keempat) di mana beliau telahpun mengaku salah pada peringkat prosiding yang lebih awal.

(2) Terdapat juga pelanggaran keadilan prosedur yang serius dalam pembuatan lima tuduhan tersebut tanpa mengendahkan tarikh kesalahan-kesalahan tatatertib itu dilakukan, memandangkan kesalahan-kesalahan itu dilakukan merentasi jangka masa hampir tiga tahun dan plaintif terpaksa menghadap hanya satu prosiding bilik perbicaraan untuk kesemua lima tuduhan di hadapan pihak berkuasa pengadilan yang sama. Keadilan prosedur telah dikompromi dengan serius dan plaintif telah hilang peluangnya untuk sesuatu pembicaraan yang adil dan tidak prejudis, lebih-lebih lagi berkenaan dengan hukuman yang berpatutan untuk kesalahan-kesalahan masing-masing dalam

A aturan berurut bila mereka dilakukan. Dengan mengenakan hukuman keras pembuangan kerja untuk tuduhan kelima, pihak berkuasa pengadilan tidak langsung memberi apa-apa pertimbangan kepada sama ada plaintif boleh melakukan kesalahan dalam tuduhan kelima pada masa yang lebih awal
B dari mana-mana empat tuduhan, di mana beliau tidak dikenakan hukuman yang sekeras seperti yang mana dikenakan untuk tuduhan kelima.

(3) Terdapat ketidakpatuhan prosedur yang serius (nyata dan
C tersirat dalam Peraturan) oleh pihak berkuasa pengadilan dalam prosiding bilik perbicaraan dalam: (i) tidak merekodkan secara ringkas fakta yang menyokong tuduhan-tuduhan masing-masing; (ii) tidak memastikan sama ada fakta menyokong kesalahan yang dilakukan; (iii) tidak membuat dapatan mengenai sama ada
D kesalahan telah dibuktikan; dan (iv) tidak merekodkan dapatan bersalah sebelum mengenakan hukuman bagi kesalahan itu. Tidak ada apa-apa keraguan bahawa keadilan prosedur telah dikompromi oleh pihak berkuasa pengadilan dengan tidak mematuhi r. 6(2)(a) dan (c) Peraturan. Ini telah menyebabkan
E satu salah laksana keadilan yang serius dan telah prejudis plaintif secara bertentangan seperti yang dibayangkan dalam hukuman "pembuangan kerja" yang dikenakan apabila tidak ada fakta yang direkod untuk menyokong kesalahan yang dikatakan dan tiada dapatan bersalah yang direkod untuk tuduhan
F masing-masing.

(4) Lagipun, berdasarkan fakta, suatu kesilapan yang ketara dalam pembuatan kesalahan-kesalahan yang dikatakan dalam tuduhan-tuduhan ketiga, keempat dan kelima telah membuatkan mereka
G tidak sah dalam undang-undang dan, akibatnya, keputusan pihak berkuasa pengadilan tidak munasabah dan berlawanan.

(5) Dalam keadaan seperti di atas, keputusan pihak berkuasa pengadilan, di dalam prosiding bilik perbicaraan yang diadakan pada 19 Mac 1997, mesti dibatalkan atas alasan ketidakadilan
H prosedur atau ketidakmunasabahan *Wednesbury*.

Case(s) referred to:

Ghazi Mohd Sawi v. Mohd Haniff Omar, Ketua Polis Negara Malaysia & Anor [1994] 2 CLJ 333 SC ***(refd)***

I *Griffiths (Inspector of Taxes) v. JP Harrison (Watford) Ltd [1962] 1 All ER 909* ***(refd)***

Nordin Hj Zakaria P/SAC II, Timbalan Ketua Polis Kelantan & Anor v. Mohd Noor Abdullah [2004] 2 CLJ 777 FC ***(refd)***

Legislation referred to:
Public Officers (Conduct & Discipline) Regulations 1993, reg. 28
Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970, regs. 2, 6(2)(a), (c), (10), 7

For the appellant - Karpal Singh (Nicholas Netto with him); M/s Karpal Singh & Co
For the respondent - Munahyza Mustafa SFC

[Appeal from High Court, Kuala Lumpur; Civil Suit No: S6-21-58-1999]

Reported by Suresh Nathan

JUDGMENT

KN Segara JCA:

[1] The appellant (plaintiff) was a Lance Corporal with the Royal Malaysia Police Force. He was dismissed from service after a disciplinary proceeding presided over by the 1st respondent (1st defendant), a servant and/or agent of the 2nd respondent (2nd defendant).

[2] The plaintiff filed a writ of summons on 3 June 1999, in the High Court, Kuala Lumpur, and averred that he had on 19 March 1997, appeared in an orderly room proceeding faced with 5 charges, under the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970. The plaintiff averred that he was not informed in writing that he might be dismissed, he was not represented in the orderly room proceeding and the sentence of dismissal on the 5th charge was null and void. The plaintiff claimed, *inter alia*, for:

(a) A declaration that the 1st defendant had infringed reg. 28 of the Peraturan-peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993;

(b) A declaration that the dismissal of the plaintiff from the Royal Malaysia Police Force was against natural justice;

(c) A declaration that the sentences of reprimand for the 1st Charge and severe reprimand for the 2nd, 3rd and 4th Charges and dismissal for the 5th charge imposed by the 1st defendant were wrong and had no legal effect and the plaintiff is still a Lance Corporal in the Royal Malaysian Police Force;

A (d) An order for an account to be made to all the emoluments and other benefits due to the plaintiff.

[3] The learned trial judge dismissed the plaintiff's claim with costs and hence this appeal before us.

B **[4]** In order to appreciate whether there has been any breach of natural justice, procedural impropriety or unreasonableness in the dismissal of the plaintiff, we are of the view a careful perusal of the notes of the disciplinary proceedings before the adjudicating C authority (1st defendant) on 19 March 1997, would help determine the issue one way or another. The principles with regard to judicial review of decisions of disciplinary tribunals are quite well settled. It is a firmly established proposition that a decision by a public decision maker may be struck down by the D courts, on grounds of procedural unfairness or *Wednesbury* unreasonableness. In *Ghazi bin Mohd Sawi v. Mohd Haniff Bin Omar, Ketua Polis Negara Malaysia & Anor (Supreme Court)* [1994] 2 CLJ 333, Haji Mohd Serjan CJ (Borneo) at p. 340, expressed:

> in law there are two categories of unreasonableness one of which E is referred to as comprehensive unreasonableness and the other is a distinct category of unreasonableness altogether which, with reference to a decision, amounts to an absurd or perverted decision which is a perverse finding, so devoid of plausible justification that no reasonable body of persons could have reached it. Both categories are now known as Wednesbury principles of F unreasonableness because they were first pronounced by Lord Greene MR in the case of *Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1 KB 223.

[5] Lord Denning MR in *Griffiths (Inspector of Taxes) v. JP* G *Harrison (Watford) Ltd* [1962] 1 All ER 909 at p. 916 had this to say on the second type of unreasonableness (absurd or perverted decision):

> It is now settled, as well as anything can be that their conclusion cannot be challenged unless it was unreasonable, so unreasonable H that it can be dismissed as one which could not reasonably be entertained by them. It is not sufficient that the Judge would himself come to a different conclusion. Reasonable people on the same facts may reasonably come to different conclusions: and often do. Jurists do. So do Judges. And are they not all I reasonable men? **But there comes a point when a Judge can say that no reasonable man could reasonably come to that conclusion. Then, but not till then, he is entitled to interfere**. (emphasis added)

[6] It is sufficient to remind ourselves here that domestic tribunals conducting an inquiry are by no means bound by the strict rules which apply to criminal trials or must follow the procedure of a court of law or adopt procedures analogous to that of a court of law unless proscribed by statutory provisions especially applicable to that particular domestic tribunal.

[7] The notes of the orderly room proceeding are found at pp. 79 to 86 of the record of appeal and are now reproduced below for ease of reference and comprehension.

Nota Prosiding Acara Kamar Tatatertib

Tarikh/Masa: 19/03/1977		Jam:1000 – 1100
Tempat	:	Bilik Pejabat Ketua Cawangan Khas, Ibu Pejabat Polis Kontijen, Kelantan.
No Fail Pengingkar	:	IPK No: 8/97
Nama Pegawai Pengadil	:	P/ACP V. Ramasamy
Nama Pengingkar	:	L/KPL /T 6542 Mohd. Nawi Bin Yaakub
Ketua Pengiring	:	SM Mohd. Kasri (RF 51407)
Pengiring	:	KPL Rosli Bin Lasim

Pembukaan

Pada 19/3/97 @ jam 1000 di Bilik pejabat KCK Kelantan, saya P/ACP V. Ramasamy, Ketua Cawangan Khas KELANTAN menjalankan kamar Tatatertib keatas Pengingkar L/KPL/T 6542 MOHD. NAWI BIN YAAKUB yang buat masa ini ditahan kerja dibawah Sek. 78(1) Akta Polis 1967 berkuatkuasa mulai 4 FEB 97.

Saya menjalankan prosiding ini diatas kuasa yang diberikan di bawah Penurunan Kuasa P.U.(B) 621 bertarikh 1 JAN 1986, sebagaimana peruntukkan Artikel 140 (6) Suruhanjaya Pasukan Polis di dalam Perlembagaan Malaysia.

Permulaan

Prosiding dimulakan pada jam 1000 dengan Pengingkar (B1) diperintahkan masuk oleh Ketua Pengiring. Saya telah tidak menyemak Kad Kuasa (B1) kerana ianya telah diambil oleh Ketua Jabatan akibat penahan kerja pada 4 FEB 97. Pengingkar mengatakan ia bersedia untuk dibicarakan. Saya telah menyemak notis yang diserahkan kepada (B1) dan didapati bahawa (B1) mengesahkan ia telah menerima notis itu pada 24/2/97. Notis itu telah disempurnakan oleh ...

Membaca Pertuduhan & Prosiding

Saya telah mebacakan kelima-lima pertuduhan, satu per satu, kepada B1 sebagaimana di dalam Pol. 9A. Pengakuan B1 terhadap pertuduhan-pertuduhan serta prosiding dan keputusan adalah seperti berikut:

Pertuduhan No 1

Bahawa anda, sebagai L/KPL/T di dalam Pasukan Polis Di Raja Malaysia, pada ketika itu berkhidmat di Balai Polis Rantau Panjang, Daerah Pasir Mas, dalam Negeri Kelantan telah didapati Enggan atau Cuai iaitu pada 24 November, 1996 dengan tidak membuat apa-apa catatan yang anda berkewajipan membuat di dalam buku saku anda. Perbuatan anda bercanggah dengan Arahan PTKPN A 121 bertarikh 1 September 1981. Oleh yang demikian anda telah melakukan satu kesalahan tatatertib di bawah Peraturan 2 (46) Peratura-Peraturan Polis (Kelakuan dan Tatatertib) (Pegawai-Pegawai Rendah Polis dan Konstabel) 1970 P.U.(A) 86 bertarikh 24 Februari, 1984 dan P.U.(A) 56 (Pindaan bertarikh 8 Februari 1984) dan boleh dihukum di bawah Peraturan yang sama.

S/ Adakah B1 memahami pertuduhan yang saya telah bacakan?

J/ Saya faham.

S/ Mengikut surat anda bertarikh 27 FEB 1997, anda memerlukan seorang pegawai pembela nama C. Insp HUSSAIN Bin HAMZAH dan saya telah meluluskan permohonan anda. Dimanakah pegawai pembela ini?

J/ Saya telah meminta C/Insp HUSSAIN Bin HAMZAH membela saya dan saya tidak tahu mengapa ia tidak hadir untuk membela saya.

S/ Apakah pengakuan anda terhadap pertuduhan yang saya telah bacakan?

J/ Saya mengaku salah.

S/ Adakah anda faham tentang implikasi pengakuan ini?

J/ Tidak faham.

Saya memberi keterangan kepada B1 bahawa sebagai seorang Pegawai Pengadil berpangkat ACP boleh menjatuhkan mana-mana hukuman seperti berikut:

- Dibuang kerja
- Diturunkan pangkat
- Denda tidak lebih dari sebulan gaji
- Celaan keras

– Celaan
– Tugas kawalan tambahan
– Tugas-tugas memenatkan
– Latihan tambahan

Setelah saya memberi keterangan di atas, B1 menyatakan bahawa ia memahami jenis hukuman yang boleh saya jatuhkan.

S/ Sebelum saya jatuhkan hukuman, adakah apa-apa rayuan yang anda ingin buat?

J/ Saya pohon menjatuhkan hukuman yang ringan sebab saya terlupa menulis buku saku pada tarikh berkenaan kerana saya telah membawa banduan ke Sg. Siput pada tarikh berkenaan dan terlupa menulis buku saku sekembalinya daripada tugas.

Keputusan Atas Pertuduhan No. 1

Setelah mendengar penjelasan serta rayuan B1, saya dapati alasan yang dikemukakan adalah tidak manasabah. Dengan itu, saya jatuhkan hukuman "Celaan". B1 menerima hukuman ini.

Pertuduhan No. 2

Bahawa anda, sebagai L/KPL/T di dalam Pasukan Polis Di Raja Malaysia, pada ketika itu berkhidmat di Balai Polis Rantau Panjang, Daerah Pasir Mas, dalam Negeri Kelantan telah didapati Enggan atau Cuai iaitu pada tarikh di antara 6 Disember, 1996 hingga 9 Disember 1996 dengan tidak membuat apa-apa catatan yang anda berkewajipan membuat di dalam buku saku anda. Perbuatan anda bercanggah dengan Arahan PTKPN A 121 bertarikh 1 September 1981. Oleh yang demikian anda telah melakukan satu kesalahan tatatertib di bawah Peraturan 2(46) Peratura-Peraturan Polis (Kelakuan dan Tatatertib) (Pegawai-Pegawai Rendah Polis dan Konstabel) 1970 P.U.(A) 86 bertarikh 24 Februari, 1984 dan P.U.(A) 56 (Pindaan bertarikh 8 Februari 1984) dan boleh dihukum di bawah Peraturan yang sama.

S/ Adakah memahami pertuduhan yang saya telah bacakan?

J/ Saya faham.

S/ Apakahkah pengakuan anda terhadap pertuduhan yang saya telah bacakan?

J/ Saya mengaku salah.

S/ Adakah anda faham tentang implikasi pengakuan ini?

J/ Faham.

S/ Sebelum saya jatuhkan hukuman, adakah apa-apa rayuan yang anda ingin buat?

J/ Pada tarikh berkenaan, OCS tidak dapat membekalkan buku saku baru dan ia telah arah saya membeli "Buku 555" untuk membuat catatan sementara menuggu buku saku baru. Saya tidak membeli "Buku 555". Apabila Buku Saku dibekalkan kepada saya beberapa hari kemudian, saya telah terlupa membuat catatan bagi 6 DIS 96 hingga 9 Dis 96. Saya pohon menjatuhkan hukuman yang ringan.

Saksi Pendakwaan

S/Insp Abu Bakar Bin Hamidon (RF 55188) telah dipanggil sebagai PW1 dan minta memberi keterangan mengenai pembekalan Buku Saku pada bulan Disember 1996. PW1 memberitahu bahawa pada 6 Disember 1996, memang tidak ada bekalan buku saku.

Pemeriksaan Balas Oleh Pengingkar

B1 tidak menyoalkan PW1.

Keputusan Atas Pertuduhan No. 2

Setelah mendengar penjelasan serta rayuan B1, saya dapati alasan yang dikemukakan adalah tidak manasabah. Dengan itu, saya jatuhkan hukuman "Celaan Keras". B1 meminta kurangkan hukuman tetapi saya telah mengekalkan hukuman yang telah saya jatuhkan.

Pertuduhan No. 3

Bahawa anda, sebagai L/KPL/T di dalam Pasukan Polis Di Raja Malaysia, pada ketika itu berkhidmat di Balai Polis Rantau Panjang, Daerah Pasir Mas, dalam Negeri Kelantan pada 12 April 1993 telah didapati ingkar perintah-perintah kerana tidak mengistiharkan harta tambahan kepada pihak berkuasa Tatatertib iaitu sebuah M/Kar Jenis Proton Saga 1.5 S Nombor pendaftaran DT 5949 yang didaftar atas nama isteri anda. Perbuatan anda bercanggah dengan Arahan Pekeliling Perkhidmatan Bilangan 8/95 bertarikh 7 June 1995. Oleh yang demikian anda telah melakukan satu kesalahan Tatatertib dibawah Peraturan 2 (7), Peratura-Peraturan Polis (Kelakuan dan Tatatertib) (Pegawai-Pegawai Rendah Polis dan Konstabel) 1970 P.U.(A) 86 bertarikh 24 Februari, 1984 dan P.U.(A) 56 (Pindaan bertarikh 8 Februari 1984) dan boleh dihukum di bawah Peraturan yang sama.

S/ Adakah memahami pertuduhan yang saya telah bacakan?

J/ Saya faham.

S/ Apakah pengakuan anda terhadap pertuduhan yang saya telah bacakan?

J/ Saya mengaku salah.

S/ Adakah anda faham tentang implikasi pengakuan ini? A

J/ Faham.

S/ Sebelum saya jatuhkan hukuman,adakah apa-apa rayuan yang anda ingin buat?

J/ Saya telah mendapat kebenaran daripada Ketua Polis Daerah untuk memiliki kereta ini yang pada ketika itu bernilai RM20,000 *tetapi saya tidak tahu tentang wujudnya "Pekililing Perkhidmatan Bil. 8, 1995" dan seterusnya tidak mengistiharkan harta itu.* Namun demikian, saya memohon supaya hukuman ringan dijatuhkan. B C

Keputusan Atas Pertuduhan No. 3

Setelah mendengar penjelasan serta rayuan B1, saya dapati alasan yang dikemukakan adalah tidak manasabah atas prinsip "ignorance of the law is no excuse" dan jatuhkan hukum "Celaan Keras" B1 meminta kurangkan hukuman tetapi saya mengekalkan hukuman yang telah saya jatuhkan. D

Pertuduhan No. 4

Bahawa anda, sebagai L/KPL/T di dalam Pasukan Polis Di Raja Malaysia, pada ketika itu berkhidmat di Balai Polis Rantau Panjang, Daerah Pasir Mas, dalam Negeri Kelantan pada 9 Julai 1994 telah didapati ingkar perintah kerana tidak mengistiharkan harta tambahan kepada pihak berkuasa Tatatertib iaitu sebuah M/sikal Yamaha Y110 Nombor Pendaftaran DY 1569 yang didaftarkan atas nama anda. Perbuatan anda bercanggah dengan Arahan Pekeliling Perkhidmatan Bilangan 8/95 bertarikh 7 June 1995. Oleh yang demikian anda telah melakukan satu kesalahan Tatatertib dibawah Peraturan 2(7), Peratura-Peraturan Polis (Kelakuan dan Tatatertib) (Pegawai-Pegawai Rendah Polis dan Konstabel) 1970 P.U.(A) 86 bertarikh 24 Februari, 1984 dan P.U.(A) 56 (Pindaan bertarikh 8 Februari 1984) dan boleh dihukum di bawah Peraturan yang sama. E F G

S/ Adakah memahami pertuduhan yang saya telah bacakan?

J/ Saya faham.

S/ Apakahkah pengakuan anda terhadap pertuduhan yang saya telah bacakan? H

J/ Saya mengaku salah.

S/ Adakah anda faham tentang implikasi pengakuan ini?

J/ Faham. I

S/ Sebelum saya jatuhkan hukuman,adakah apa-apa rayuan yang anda ingin buat?

J/ Saya telah mendapat kebenaran daripada Ketua Polis Daerah untuk memiliki motorsikal dan oleh kerana motorsikal itu adalah RM4200 sahaja, saya beranggapan tidak perlu mengistiharkannya.

Setelah mendengar rayuan B1, saya telah membacakan Para 2(b)(iv), Pekeliling Perkhidmatan No. 8, 1995 dan memberitahu bahawa alasan yang diberinya adalah tidak manasabah. B1 tidak memberi sebarang respon terhadap penjelasan ini.

Keputusan Atas Pertuduhan No. 4

Setelah mendengar penjelasan serta rayuan B1, saya dapati alasan yang dikemukakan adalah tidak manasabah atas prinsip "ignorance of the law is no excuse" dan jatuhkan hukum "Celaan Keras" B1 meminta kurangkan hukuman tetapi saya mengekalkan hukuman yang telah saya jatuhkan.

Pertuduhan No. 5

Bahawa anda, sebagai L/KPL/T di dalam Pasukan Polis Di Raja Malaysia, pada ketika itu berkhidmat di Balai Polis Rantau Panjang, Daerah Pasir Mas, dalam Negeri Kelantan telah didapati ingkar perintah kerana tidak mengistiharkan harta tambahan kepada pihak berkuasa Tatatertib iaitu sebidang tanah kebun getah seluas 9 ekar di Gua Musang, Kelantan yang dimiliki oleh isteri anda. Perbuatan anda bercanggah dengan Arahan Pekeliling Perkhidmatan Bilangan 8/95 bertarikh 7 June 1995. Oleh yang demikian anda telah melakukan satu kesalahan Tatatertib dibawah Peraturan 2(7), Peraturan-Peraturan Polis (Kelakuan dan Tatatertib) (Pegawai-Pegawai Rendah Polis dan Konstabel) 1970 P.U.(A) 86 bertarikh 24 Februari, 1984 dan P.U.(A) 56 (Pindaan bertarikh 8 Februari 1984) dan boleh dihukum di bawah Peraturan yang sama.

S/ Adakah memahami pertuduhan yang saya telah bacakan?

J/ Saya faham.

S/ Apakahkah pengakuan anda terhadap pertuduhan yang saya telah bacakan?

J/ Saya mengaku salah.

S/ Adakah anda faham tentang implikasi pengakuan ini?

J/ Faham.

S/ Sebelum saya jatuhkan hukuman,adakah apa-apa rayuan yang anda ingin buat?

J/ Oleh kerana harta ini adalah harta pusaka isteri, saya fikir tidak perlu mengistihar harta tersebut.

Setelah mendengar rayuan B1, saya telah merujuk Para 3, Pekeliling Perkhidmatan No. 8, 1995 dan memberitahu bahawa alasan tidak mengetahui arahan Pekeliling Perkhidmatan No. 8, 1995 adalah dan tidaklah menjadi satu alasan. B1 tidak memberi sebarang respon terhadap penjelasan ini.

Keputusan Atas Pertuduhan No. 5

Setelah menimbangkan kes ini secara adil dan saksama bagi tujuan mencapai objektifnya yang terbaik, maka saya mendapati B1 tidak dapat membebaskan dirinya daripada pertuduhan.

Setelah mendengar penjelasan serta rayuan B1, dan mengambil kira empat kesalahan tatatertib yang saya telah menjatuhkan hukuman sebelum ini, saya dapati anggota ini adalah seorang anggota yang mempunyai tabiat mengingkar perintah dengan alasan "tidak tahu" yang mana tidak boleh diterima. Jika kelakuan sebegini dibiarkan berterusan, ianya akan menjejaskan nama baik serta imej Pasukan Polis Di Raja Malaysia. Oleh itu, saya tidak ada pilihan lain kecuali menjatuhkan hukuman "Buang Kerja" terhadap B1. Lepas menjatuhkan hukuman ini, B1 membuat rayuan agar ianya dikenakan mana-mana hukuman selain dari dibuang kerja, tetapi saya masih mengekalkan hukuman yang saya telah jatuhkan.

(V. Rasmasamy) P/ACP
Pegawai Pengadil
19 Mac 97
Jam 1100

[8] The orderly room proceeding conducted by the adjudicating authority is governed by the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970 (hereinafter referred to as the "Police Regulations 1970"). The five disciplinary charges framed against the plaintiff were in respect of alleged disciplinary offences under reg. 2, specified in the Schedule of the Police Regulations 1970. There are 66 disciplinary offences listed under the Schedule. The five separate charges were in respect of two disciplinary offences falling under para. (7) and para. (46) in the Schedule of the Police Regulations 1970 which reads:

A

Schedule

(Regulation 2)

Any junior police officer or constable who:

(1) …

B

…

(7) **wilfully** disobeys any lawful order or command, whether written or otherwise, **or without good cause** omits or neglects to carry out promptly any such order or command or perform any duty;

C

…

(46) **refuses** or **neglects** to make any entry in any official record, register, book, or other document which it is his duty to make;

D

(…)

(66) ……;

(emphasis added)

shall be guilty of an offence against discipline and shall be liable E to any of the following punishments:

(a) Dismissal;

(b) Reduction in rank;

(c) Deferment of increment;

F

(d) Stoppage of increment;

(e) Fine not exceeding one month's pay;

(f) Severe reprimand;

(g) Reprimand;

G

(h) Extra guard duty for a time not exceeding four hours a day for a period not exceeding five days;

(i) Fatigue duty for a time not exceeding four hours a day with ten minutes rest after each hour of the fatigue duty for a H period not exceeding five days;

(j) Extra drill for a time not exceeding two hours a day with ten minutes rest after each hour of the extra drill for a period not exceeding five days:

I

Provided that the time of rest referred to in subparagraph (i) and (j) are not counted as punishment time.

[9] It is important to take note that notwithstanding the punishments spelt out in the Schedule, an adjudicating authority has power to "caution and discharge" an officer. This is provided for in reg. 7 of the Police Regulations 1970, which reads:

> Notwithstanding any other provisions herein, the adjudicating authority may, *in lieu* of awarding any other punishment, *caution and discharge* the officer. This discretion will normally be exercised by the adjudicating authority only in cases where the offence though proved, is of so trivial a nature as not to warrant the award of a severe punishment.

[10] Now, reverting back to the orderly room procedure, reg. 6 of the Police Regulations 1970 provides as follows:

> **6. Orderly Room Procedure**
>
> (1) The charge shall be read out to the officer by the adjudicating authority and if necessary explained to him. He shall then be called upon to plead to the charge.
>
> (2) If the officer **pleads guilty**:
>
> (a) the adjudicating authority **shall record briefly the facts in support of the charge** and shall explain them to the officer. The facts will be obtained by questioning any officer or witness who has knowledge of the facts, or, if the adjudicating authority has been supplied with any documents containing the facts of the charge, by reference to such documents;
>
> (b) the officer shall then be invited to make any statement he wishes in extenuation of the offence. Such statement shall be recorded, or if he has nothing to say, such fact shall be recorded;
>
> (c) the adjudicating authority shall then **record a finding of guilt** and award a punishment in respect of the offence.
>
> (3) (a) If the officer pleads not guilty or refuses to plead, the adjudicating authority shall examine the witnesses in support of the charge and their evidence shall be recorded:
>
> Provided ...
>
> (4) ...
>
> (5) ...
>
> (6) ...

A (7) …

(8) …

(9) ..

B (10) The adjudicating authority shall **at all times satisfy itself** that the officer **understands the nature and effect of the proceedings** and has a **proper opportunity to defend himself**.

(emphasis added)

C **[11]** The plaintiff was charged with five disciplinary offences committed on different dates but, was subjected to an inquiry for the five disciplinary offences in the same orderly room proceeding.

D **[12]** With reference to the 1st to the 4th charge, it is patently clear that the said four charges were not framed and numbered sequentially, in the order of the respective dates the offences were committed. The four offences were committed in the following chronology:

E (i) 12 April 1993 ("ingkar perintah kerana tidak mengistiharkan harta tambahan") – the 3rd charge;

(ii) 9 July 1994 ("ingkar perintah kerana tidak mengistiharkan harta tambahan") – the 4th charge;

F (iii) 24 November 1996 ("enggan atau cuai membuat apa-apa catatan dalam buku saku") – the 1st charge;

(iv) 6-9 December 1996 ("enggan atau cuai membuat apa-apa catatan dalam buku saku") – the 2nd charge.

G **[13]** The plaintiff was thus subjected to an inquiry of the four alleged disciplinary offences not in the logical sequence they were committed – this is clearly contrary to the dictates of common sense and procedural fairness in disciplinary proceedings. H We are of the view the situation in which a later disciplinary offence, in a series of disciplinary offences, is inquired into and disposed off with an award of a punishment in priority to an earlier disciplinary offence, would be unfair, unjust and unreasonable, as the offender would be lulled into believing a I similar punishment, as that awarded for the later disciplinary

offence, would also be awarded for all the earlier similar disciplinary offences, as well. He would inevitably plead "guilty" to the remaining charges in the legitimate expectation that the severe punishment of dismissal would not be awarded (if he is not told by the adjudicating authority that the severe punishment of "dismissal" would befall on him in respect of the subsequent charges).

[14] Now, in respect of the 5th disciplinary offence ("ingkar perintah kerana tidak mengistiharkan harta tambahan"), alleged in the 5th charge, it is not clear when the offence was committed because the charge does not specify any date. It could be an offence committed well before 12 April 1993 and, therefore, the plaintiff ought to have, in all fairness, been subjected to an orderly room proceeding instituted before 19 March 1997 for that alleged offence, or alternatively, the said disciplinary offence ought not to have been the subject matter of the 5th charge at all, bearing in mind the subject matter of the offence is inherited property of the plaintiff's wife and not property belonging to the plaintiff.

[15] The following facts are irrefutable *vide* the five disciplinary offences:

1) the 3rd charge (1st offence) and the 4th charge (2nd offence) are in respect of a similar offence under para. 7 of the Schedule ("ingkar perintah kerana tidak mengistiharkan harta tambahan") committed on 12 April 1993, and 9 July 1994, respectively. The punishment imposed for the 3rd and 4th charge, respectively, was "Celaan Keras" ((f) Severe Reprimand);

2) The 1st and 2nd charge (3rd and 4th offence) are in respect of a similar offence under para. 6 of the Schedule ("enggan atau cuai membuat apa-apa catatan dalam buku saku") committeed on 24 November 1996, and between 6-9 December 1996, respectively. The punishment imposed was "Celaan" ((g) Reprimand) for the 1st charge, and "Celaan Keras" ((f) Severe Reprimand) for the second charge;

3) The 5th charge was in respect of an offence similar to that in the 3rd and 4th charge (1st and 2nd offence), that is, an offence under para. 7 of the Schedule ("ingkar perintah kerana tidak mengistiharkan harta tambahan"). It is also significant to

note that the most severe punishment was imposed for this charge, that is, "Buang Kerja" ((a) Dissmissal). However, it is imperative to take note the date of the offence is not disclosed.

[16] It would appear that the adjudicating authority had a pre-conceived notion that the severest punishment (dismissal) was the only option open to him by way of punishment for the 5th charge, in view of the less severe punishments he had already awarded for the four charges disposed off immediately prior to this charge and/or the plaintiff was by now deemed an incorrigible and recalcitrant officer because of his "previous record", in respect of the four charges! There is nothing to suggest that the adjudicating authority had the award of the severest punishment, as the only option open to him in his mind, brought to the plaintiff's attention immediately before the plea for the 5th charge was recorded. In the particular circumstances of this case, notwithstanding the decision of the Federal Court in *Nordin bin Haji Zakaria P/SAC II, Timbalan Ketua Polis Kelantan & Anor v. Mohd Noor bin Abdullah* [2004] 2 CLJ 777, we are of the view that the failure on the part of the adjudicating authority in not bringing to the attention of the plaintiff the intended award of the severest punishment for the 5th charge (when such punishment is not mandatory) is a clear violation of the rules of natural justice and a breach of r. 6(10) of the Police Regulations 1970 (see above). The situation here must be distinguished from that in *Nordin bin Haji Zakaria P/SAC II, Timbalan Ketua Polis Kelantan & Anor v. Mohd Noor bin Abdullah*, where there were four issues before the Federal Court:

(1) Whether the disciplinary proceedings against the respondent should have been conducted under the Public Officers (Conduct and Discipline)Regulations 1993;

(2) Whether Regulation 28(1) of Public Officers (Conduct and Discipline) Regulation,1993, applies, to a Junior Police Officer such as the respondent in the disciplinary proceeding (Orderly Room Procedure) conducted under Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations,1970;

(3) Whether the Disciplinary Authority **before conducting** Disciplinary Proceeding (Orderly Room Procedure) under Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations, 1970, is required to inform a Junior Police Officer such as the respondent of the **possibility** that he might be dismissed from service; and

(4) Whether the respondent had been treated with procedural fairness. (emphasis added)

[17] We entirely agree with Siti Norma Yaakob FCJ when she states at p. 784:

> Reading the provisions of the 1970 Regulations in its entirety, I see no requirement that entitles the Respondent to be informed of the possibility of him being dismissed or reduced in rank in the event he is convicted of any of the charges preferred against him **in either the show cause letter or prior to the start of the disciplinary enquiry**. There is no provision imposing a similar obligation as that prescribed by reg. 28(1) of the 1993 Regulations. Since the 1970 Regulations imposed no duty on the first apellant to inform the respondent at the first opportunity of the likelihood of his dismissal or reduction in rank, the first appellant cannot be said to have deprived the respondent of any procedural fairness as there cannot be any breach of duty where none exists in law. (emphasis added)

[18] In the present case before us, when the adjudicating authority was dealing with the 5th charge immediately after the 4th charge, it would appear that the adjudicating authority had the severest punishment of "dismissal" as the only option open to him by way of punishment for the 5th charge. Here, the certainty of dismissal for the 5th charge loomed in the mind of the adjudicating authority, unlike the factual matrix of the Federal court case (referred to above) where the issue of possibility of dismissal arose for consideration. In the circumstances, we are of the view the adjudicating authority owes a duty (consonant with procedural fairness) to inform the plaintiff of the punishment of "dismissal" for the 5th charge so that the plaintiff could consider his plea carefully, in the light of the severe consequences that would follow for this 5th charge, in sharp contrast to the punishment already awarded for a similar offence (*vide* 3rd and 4th charge) to which he had pleaded guilty, earlier in the proceeding.

[19] We are also of the view there has been a serious breach of procedural fairness in framing the five charges in total disregard of the date of the commission of the disciplinary offences bearing in mind the offences were committed over a span of almost three years and, the plaintiff subjected only to one orderly room proceeding for all the five charges before the same adjudicating officer. Procedural fairness has been seriously compromised and the plaintiff deprived of a fair and unprejudiced hearing, particularly with regard to the appropriate punishment for the respective offences in their sequential order of commission. In imposing the severe punishment of dismissal for the 5th charge, the adjudicating officer had completely given no consideration as to whether the plaintiff could have committed the offence in the 5th charge earlier in time than any of the four charges for which he had not imposed the punishment as severe as that for the 5th charge. Had the 5th charge in fact appeared as the 1st, 2nd, 3rd or 4th charge for inquiry in the orderly room proceeding that day, would the adjudicating authority have imposed the punishment of "Buang Kerja"?

> (Setelah mendengar penjelasan serta rayuan B1, dan *mengambil kira empat kesalahan* tatatertib yang saya telah menjatuhkan hukuman sebelum ini, saya dapati anggota adalah seorang anggota yang mempunyai tabiat mengingkar perintah dengan alasan "tidak tahu" yang mana tidak boleh diterima. Jika kelakuan sebegini dibiarkan berterusan, ianya akan menjejaskan nama baik serta imej Pasukan Polis Di Raja Malaysia. Oleh itu, saya tidak ada pilihan lain kecuali menjatuhkan hukuman "Buang Kerja" terhadap B1)

[20] There has been serious procedural non compliance (express and implied in the Police Regulations 1970) by the adjudicating authority in the orderly room proceeding in:

1) not recording briefly the facts in support of the respective charges (see r. 6(2)(a) of the Police Regulations 1970);

2) not ascertaining whether the facts support the offence committed (see r. 6(2)(a) of the Police Regulations 1970);

3) not making a finding as to whether the respective offence has been proved;

4) not recording a finding of guilt before awarding a punishment in respect of the offence (see r. 6(2)(c) of the Police Regulations 1970).

[21] There can be no doubt that procedural fairness has been compromised by the adjudicating authority in not complying with rr. 6(2)(a) & 6(2)(c) of the Police Regulations 1970. This has occasioned a serious miscarriage of justice and adversely prejudiced the plaintiff as clearly reflected in the award of the punishment of "dismissal" when no facts had been recorded to support the alleged offences and no finding of guilt recorded for the respective charges.

[22] Further, a patent error in the framing of the alleged offences in the 3rd, 4th and 5th charge has rendered the charges bad in law and, consequently, the decision of the adjudicating authority absurd and perverse.

[23] The date on which the offence in the 3rd charge was alleged to have been committed was 12 April 1993. However, the alleged offence was in relation to a service circular dated 7 June 1995 ("Perbuatan anda bercanggah dengan Arahan Perkeliling Perkhidmatan Bilangan 8/95 bertarikh 7 June 1995. Oleh yang demikian anda telah melakukan satu kesalahan tatatertib ...") How could the plaintiff commit an offence in April, 1993, in respect of a service circular that was non existent in 1993? The charge on the face of it is absurd and unreasonable and consequently any decision thereon is null and void.

[24] Likewise, the date on which the offence in the 4th charge was alleged to be committed was 9 July 1994, in relation to a service circular dated 7 June 1995 ("Perbuatan anda bercanggah dengan Arahan Perkeliling Perkhidmatan Bilangan 8/95 bertarikh 7 June 1995. Oleh yang demikian anda telah melakukan satu kesalahan tatatertib ..."). Again, no offence could have been committed as alleged, in 1994, with reference to a service circular that came into existence only in June, 1995.

[25] In the 5th charge, the date the alleged offence was committed was not stated at all. This offence is also in relation to the service circular dated 7 June 1995. A charge that does not specify the date when the offence was committed is bad in law, for uncertainty. It is unsustainable. It is unfair and unreasonable to institute any disciplinary proceedings on such a charge. The adjudicating authority has acted unreasonably in arriving at its decision to dismiss the plaintiff.

A **[26]** In the above circumstances, we are unanimous that the decision of the adjudicating authority, in the orderly room proceeding held on 19 March 1997, must be struck down on grounds of procedural unfairness or *Wednesbury* unreasonableness. In the upshot, we are unanimous that the appeal be allowed with
B costs here and below. We declare that the dismissal of the appellant is null and void and we direct that an inquiry into the emoluments and other benefits that the appellant is entitled to receive from the respondents be conducted by the senior assistant registrar of the High Court.

C **[27]** Deposit refunded to appellant.

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